



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2022-0483]

RIN 1625-AA87

### Security Zone; San Francisco Bay, San Francisco, CA

**AGENCY:** Coast Guard, Department of Homeland Security (DHS).

**ACTION:** Final rule.

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**SUMMARY:** The Coast Guard is establishing a security zone in the navigable waters of the San Francisco Bay near Yerba Buena Island within the San Francisco Captain of the Port (COTP) zone. This security zone is necessary to provide for the security of military service members onboard vessels moored at the pier and the government property associated with these valuable national assets. This regulation will prohibit the entry of, transiting through, or anchoring within a portion of the San Francisco Bay extending from Yerba Buena Island unless specifically authorized by the Captain of the Port San Francisco.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2022-0483 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this rulemaking, call or email LT William Harris, Sector San Francisco, U.S. Coast Guard; telephone 415-399-7443, email [SFWaterways@uscg.mil](mailto:SFWaterways@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

## **I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

## **II. Background Information and Regulatory History**

In October 2021, the Captain of the Port (COTP) San Francisco identified a need for clearer Aids to Navigation to inform the boating public of restricted areas near Yerba Buena Island. Further discussion discovered that current regulations established a Restricted Area, but not a Security Zone. The COTP has determined that potential security concerns associated with the mooring of Coast Guard Cutters necessitate a Coast Guard Security Zone.

In response, on July 18, 2022 the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Security Zone; San Francisco Bay, San Francisco, CA” (87 FR 42665). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended August 17, 2022, we received no comments.

## **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The purpose of this rule is to ensure the security of Coast Guard facilities, personnel, and vessels, at all times within the navigable waters of the San Francisco Bay on the east side of Yerba Buena Island from a point along the southeastern shore of Yerba Buena Island at 37°48'27" N, 122°21'44" W; east to 37°48'27" N, 122°21'35" W; north to 37°48'49" N, 122°21'35" W, a point on the northeastern side of Yerba Buena Island.

## **IV. Discussion of Comments, Changes, and the Rule**

As noted above, we received no comments on our NPRM published July 18, 2022. There are no changes in the regulatory text of this rule from the regulatory text in the NPRM.

This rule establishes a security zone within the navigable waters of the San Francisco Bay on the east side of Yerba Buena Island from a point along the southeastern shore of Yerba Buena Island at 37°48'27" N, 122°21'44" W; east to 37°48'27" N, 122°21'35" W; north to 37°48'49" N, 122°21'35" W, a point on the northeastern side of Yerba Buena Island. No vessel or person will be permitted to enter the security zone unless authorized by the COTP.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size and location of the security zone. The effect of this rule will not be significant because vessel traffic can pass safely around the area, and this rule will encompass only a small portion of the waterway.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small

entities.

While some owners or operators of vessels intending to transit the security zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in

Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a security zone that would prohibit entry within navigable waters of the San Francisco Bay on the east side of Yerba Buena Island from a point along the southeastern shore of Yerba Buena Island at 37°48'27" N, 122°21'44" W; east to 37°48'27" N, 122°21'35" W; north to 37°48'49" N, 122°21'35" W, a point on the northeastern side of Yerba Buena Island. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For

instructions on locating the docket, see the **ADDRESSES** section of this preamble.

### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;  
Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Add § 165.1189 to read as follows:

#### **§ 165.1189 Security Zone; San Francisco Bay, San Francisco, CA.**

(a) *Location.* The following area is a security zone: all navigable waters of the San Francisco Bay on the east side of Yerba Buena Island from a point along the southeastern shore of Yerba Buena Island at 37°48'27" N, 122°21'44" W; east to 37°48'27" N, 122°21'35" W; north to 37°48'49" N, 122°21'35" W, a point on the northeastern side of Yerba Buena Island. These coordinates are based on North American Datum (NAD) 83.

(b) *Regulations.* (1) In accordance with the general security zone regulations in subpart D of this part, entry into the area of the security zone described in paragraph (a) of this section is prohibited unless authorized by the Captain of the Port (COTP) San Francisco.

(2) The security zone is closed to all vessel traffic, except as may be permitted by the

COTP.

(3) To seek permission to enter, contact the COTP by VHF Marine Radio channel 16 or through the 24-hour Command Center at telephone (415) 399-3547. Those in the security zone must comply with all lawful orders or directions given to them by the COTP.

(c) *Enforcement.* The Captain of the Port will enforce the security zone described in paragraph (a) of this section and may be assisted in the patrol and enforcement of this security zone by any Federal, State, county, municipal, or private agency.

Dated: September 23, 2022.

**Taylor Q. Lam,**

*Captain, U.S. Coast Guard,*

*Captain of the Port San Francisco.*

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